

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOSEPH ALVAREZ,

Case No. 07-1595-HO

Plaintiff,

ORDER

v.

Commissioner of Social Security,

Defendant.

Plaintiff filed this action for review of the decision of the Commissioner denying his application for a period of disability and disability insurance benefits. The administrative law judge did not err by failing to develop evidence of limitations resulting from Morton's neuroma, and any error in the characterization of the impairment as "non-severe" is harmless. Although Dr. Kimberly attributed plaintiff's right foot symptoms with L4-L5 or L5 radiculopathy, he nevertheless accounted for the symptoms in his assessment that plaintiff can stand or walk for six hours in an eight-hour workday. The ALJ incorporated the limitation in his assessment of plaintiff's residual functional

capacity. Plaintiff does not challenge the ALJ's determination that his subjective symptom allegations are not credible.

The medical evidence supports the ALJ's finding that plaintiff was limited to no frequent fingering until his full medical release on February 27, 2006 following convalescence from left carpal tunnel release surgery. (Tr. 22, 234, 238, 243). Plaintiff is not prejudiced by the ALJ's additional, allegedly unsupported finding that plaintiff is limited to no continuous use of the hands. The ALJ permissibly relied on the vocational expert's testimony that the need to avoid fine fingering did not preclude performance of jobs cited by the VE.

Plaintiff fails to demonstrate that the decision of the Commissioner is unsupported by substantial evidence or results from legal error.

Conclusion

Based on the foregoing, the decision of the Commissioner is affirmed.

IT IS SO ORDERED.

DATED this 17th day of November, 2008.

s/ Michael R. Hogan
United States District Judge